

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DOUGLAS HARRY WARENBACK.

Plaintiff,

Dist. Case No. 2:20-cv-01682-KJD-VCF
Appellate Case No. 21-16964

ORDER

V.

AARON FORD, Attorney General for the State
of Nevada,

Defendant.

On December 1, 2021, the Ninth Circuit Court of Appeals referred this matter to this Court for the limited purpose of determining whether in forma pauperis status should be continued for the appeal or whether the appeal is frivolous or taken in bad faith. See 28 U.S.C. § 1915(a)(3); see also Hooker v. American Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002) (revocation of forma pauperis status is appropriate where district court finds the appeal to be frivolous).

Plaintiff's original in forma pauperis ("ifp") application and accompanying complaint were filed on September 11, 2020. Plaintiff alleged that Nevada's sex-offender registration statute, NRS 179D.480, violated his constitutional rights because it states that a "sex offender shall appear in person in at least one jurisdiction in which the offender or sex offender resides," which, plaintiff alleged, made the statute an ex post facto law. Warenback alleged that the statute is unconstitutional on its face and as applied to him because he spent many years as a homeless person which made it difficult for him to comply with the required in person appearances.

The magistrate judge granted Plaintiff's *ifp* application and screened Plaintiff's claims under Hatton v. Bonner, 356 F.3d 955, 964 (9th Cir. 2003) (setting out a two-part analysis of an ex post facto clause challenge to California's sex-offender registration statute). The magistrate

1 judge determined that Plaintiff's complaint failed to state a claim based on Hatton's two-step
2 approach. However, the court allowed Plaintiff to file an amended complaint to cure the
3 deficiencies identified. The amended complaint failed to cure the deficiencies and argued that the
4 Court should apply out-of-circuit precedent rather than Hatton. The magistrate judge then
5 recommended that the Court dismiss the amended complaint without further leave to amend.
6 Upon a *de novo* review, the Court adopted the report and recommendation. See Doc. No. 12.
7 Accordingly, the Court finds that Plaintiff's appeal is frivolous and that in forma pauperis status
8 is revoked. The Clerk of the Court shall forward a copy of this order to the Ninth Circuit Court of
9 Appeals.

10 **IT IS SO ORDERED.**

11 Dated this 9th day of December, 2021.

12 
13 _____
14 Kent J. Dawson
United States District Judge

15
16
17
18
19
20
21
22
23
24
25
26
27
28